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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/919,439	07/31/2001	Romelia Flores	BOC9-2000-0079(214)	4220
40987	7590	06/02/2006	EXAMINER	
AKERMAN SENTERFITT P. O. BOX 3188 WEST PALM BEACH, FL 33402-3188			VO, LILIAN	
			ART UNIT	PAPER NUMBER
			2195	

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/919,439	Applicant(s) FLORES ET AL.	
	Examiner Lilian Vo	Art Unit 2195	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 - 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 - 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

1. Claims 1 –17 are pending.

### *Claim Rejections - 35 USC § 101*

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claim 9 is rejected under 35 U.S.C. 101 because they are directed to non-statutory subject matter.

4. Regarding claim 9, the system is at best a software system, per se, failing to be tangibly embodied or include any recited hardware as part of the system.

### *Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1 - 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deng et al. (US 6,938,256, hereinafter Deng) in view of Spix et al. (US 6,195,676, hereinafter Spix).

7. Regarding **claim 1**, Deng discloses a method for providing dynamic workload transition in an application server for an e-business system, comprising:

receiving at least one work request that includes at least one workload task having an associated workload parameter specifying a resource requirement (col. 5, lines 57 – 67, fig. 1);

determining a resource capacity of the e-business system in view of said resource requirement (col. 2, lines 47 – 66, col. 5, lines 57 – 67);

identifying a priority of said workload task over workload tasks currently executing within said e-business system (col. 5, lines 57 – 67);

predicting an overload condition in view of said resource capacity for at least one system having priority in the e-business system for executing a portion of said workload task (col. 2, lines 47 – 66, col. 3, lines 53 - 60);

causing a first reallocation of at least a portion of system resources allocated to a first set of workload tasks in the e-business system from said first set of workload tasks to a second set of workload tasks in response to predicting the overload condition, (col. 2, line 62 – col. 3, line 4);

executing a query of at least a portion of said first set of workload tasks included in said workload request in response to said first reallocation (col. 3, lines 14 – 16);

wherein the workload tasks are performed by a plurality of different applications under the direction of the e-business system (col. 2, lines 45 – 47).

Deng did not clearly disclose the processing of second set of workload tasks requires less system resources than processing said first set of workload tasks and if said first set of workload tasks require processing after the overload condition subsequently abates, performing a second reallocation of system resources to said first set of workload tasks. Nevertheless, Spix discloses

Art Unit: 2195

such teachings in col. 30, lines 49 – 56 and col. 34, lines 29 – 44. Therefore, it would have been obvious for one of an ordinary skill in the art, at the time the invention was made, to incorporate Spix's teaching together with Deng to provide services to client according resource requirement and improve the capability of the resource allocation scheme to be more adaptive and dynamic from all operating aspects (Deng: col. 2, lines 35 – 42).

8. Regarding **claim 2**, as modified Deng discloses the detecting step further comprises  
Receiving said workload request in a text format for providing visualization of a resource requirement (Deng: col. 3, lines 49 – 61);  
monitoring system parameters in the e-business system (Deng: col. 3, lines 49 - 61); and  
analyzing said monitored system parameters to predict when said overload condition occurs in the e-business system (Deng: col. 3, line 62 – col.4, line 2).

9. Regarding **claim 3**, as modified Deng discloses the text format of monitoring system parameter s comprising CPU utilization, disk I/O and memory utilization (col. 6, lines 34 – 55). As modified Deng did not specifically disclose the text format is an XML presentation. Nevertheless, the limitation narrowed by the claim is considered obvious and furthermore a matter of a design choice, since applicant has not disclosed that the claimed limitation solve any stated problem or are for any particular purpose and it appears that the invention would perform equally well without the claimed feature. Therefore, it would have been obvious for one of an ordinary skill in the art, at the time the invention was made, to utilize the system status as disclosed from modified Deng's to determine the system capacities and capabilities as needed.

10. **Claims 4 - 17** is rejected on the same ground as stated in claims 1 - 3 above.

*Response to Arguments*

11. Applicant's arguments with respect to claims 1 - 17 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lilian Vo whose telephone number is 571-272-3774. The examiner can normally be reached on Thursday 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on 571-272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lilian Vo  
Examiner  
Art Unit 2195

lv  
May 27, 2006

  
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